

# ARKANSAS SUPREME COURT

No. 05-686

NOT DESIGNATED FOR PUBLICATION

FRANK WATTS II  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered March 9, 2006

*PRO SE* APPEAL FROM THE CIRCUIT COURT  
OF LINCOLN COUNTY, LCV-2005-2-2, HON.  
JODI RAINES DENNIS, JUDGE

APPEAL DISMISSED

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## PER CURIAM

In 1999, a jury found Frank Watts II guilty of one count of possession of a controlled substance with intent to deliver cocaine, one count of possession of drug paraphernalia and one count of maintaining a drug premises. He was sentenced to an aggregate term of life imprisonment as a habitual offender. Watts did not file an appeal within the proper time limit, but thereafter sought to file a belated appeal in this court. After remanding the matter to the trial court to determine whether Watts timely notified his attorney of his wish to file an appeal<sup>1</sup>, we denied the motion for belated appeal. *Watts v. State*, CR 00-201 (Ark. September 28, 2000) (*per curiam*).

Subsequently, Watts filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition, and Watts filed an appeal in this court. We dismissed the appeal. *Watts v. State*, CR 01-544 (Ark. June 21, 2001) (*per curiam*). We also denied Watt's motion for reconsideration of that decision. *Watts v. State*, CR 01-544 (Ark. September 27, 2001) (*per curiam*).

Watts next filed a motion to vacate his conviction and sentence in the trial court pursuant to Ark. R. Civ. P. 60. The trial court denied the motion and Watts appealed the denial of the motion to this court. We dismissed the appeal. *Watts v. State*, CR 05-149 (Ark. May 26, 2005) (*per curiam*). Watts then filed in the trial court a petition and an amended petition for writ of *habeas*

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<sup>1</sup>*Watts v. State*, CR 00-201 (Ark. April 27, 2000) (*per curiam*).

*corpus* pursuant to Act 1780 of 2001. The trial court denied each petition in separate orders. Watts appealed both orders to this court. We dismissed the appeal. *Watts v. State*, CR 05-1164 (Ark. February 2, 2006) (*per curiam*).

In 2005, Watts filed a petition and an amended petition for writ of *habeas corpus* in Lincoln County. After the State filed a motion to dismiss of the petition for writ of *habeas corpus*, Watts filed a petition for writ of supersedeas to stay the *habeas corpus* proceedings.<sup>2</sup> In an order filed on March 18, 2005, the circuit court dismissed the petition for writ of *habeas corpus* with prejudice, holding that Watts did not sufficiently demonstrate that the commitment was invalid on its face or that the trial court lacked jurisdiction. Appellant Watts, proceeding *pro se*, has lodged a timely appeal in this court from that order.

Any petition for writ of *habeas corpus* is properly addressed to the circuit court in the county in which the petitioner is held in custody, unless the petition is filed pursuant to Act 1780 of 2001.<sup>3</sup> Arkansas Code Annotated §16-112-105 (1987) requires certain procedural requirements be met by a petitioner seeking a court to issue a writ of *habeas corpus*. The writ must be directed to the person in whose custody the prisoner is detained. Additionally, the writ should be issued by a court that has personal jurisdiction over the defendant. Otherwise, although a court may have subject-matter jurisdiction to issue the writ, a writ of *habeas corpus* could not have been returnable to the court issuing the writ; a court does not have personal jurisdiction to issue and make returnable before itself a writ of *habeas corpus* where the petitioner is in another county. *See, e.g., State Dept. of Public Welfare v. Lipe*, 257 Ark. 1015, 521 S.W.2d 526 (1975); *Johnson v. McClure*, 228 Ark. 1081, 312 S.W.2d 347 (1958); *State v. Ballard*, 209 Ark. 397, 190 S.W.2d 522 (1945).

In the present matter, appellant was in the custody of the Arkansas Department of Correction

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<sup>2</sup>Watts requested the *habeas* petition to be stayed until we decided the appeal related to his motion to vacate his conviction and sentence pursuant to Ark. R. Civ. P. 60. We rendered a decision in that matter on May 26, 2005.

<sup>3</sup>Act 1780 of 2001, codified at Ark. Code Ann. §§ 16-112-201–16-112-207 (Supp. 2003), provides for the filing of a petition for writ of *habeas corpus* in the trial court if certain grounds are raised.

at the Cummins Unit in Lincoln County when he filed the petition and amended petition. Since that time, he has been transferred to the Delta Regional Unit in Chicot County. As appellant's petition for writ of *habeas corpus* was not filed pursuant to Act 1780, appellant cannot seek relief until he files his petition in the Circuit Court of Chicot County. The Circuit Court of Lincoln County no longer has personal jurisdiction over appellant and cannot release a prisoner who was not in custody within that county. *See Mackey v. Lockhart*, 307 Ark. 321, 819 S.W.2d 702 (1991). Therefore, the Circuit Court of Lincoln County cannot issue a writ of *habeas corpus* that would be returnable to the court to effect appellant's release and appellant cannot obtain the specific relief he seeks in this matter.

Appeal dismissed.